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SIPDIS

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SUBJECT: NAIROBI INPUT FOR 2006 PRESIDENT'S REPORT ON AGOA

REF: STATE 26707

1. In response to reftel, please find at para 2 Post's input for the President's report to Congress on Kenya's political and economic climate as it relates to AGOA eligibility. This text has also been sent by e-mail to AF/EPS and AF/E. In addition, please note that this mission, through USAID-Kenya, and USAID's Regional Economic Development Services Office (REDSO) fund programs designed to facilitate the expansion and diversity of AGOA exports from Kenya. Information on these programs was also included in the e-mail to AF.

2. Begin Text of Post's Draft:  
Status: AGOA eligible, including for textile and apparel benefits.

AGOA Trade and Investment: [Trade figures to be updated by USTR.] Kenya's 2003 exports under AGOA and its GSP provisions, mostly apparel, were valued at \$184 million, representing 74 percent of total Kenyan exports to the United States. The government reports that AGOA-related employment was over 37,000 by 2003 but this had declined to 32,000 in 2004. There are credible reports of textile factories shutting down and additional lay-offs as a result of the January 1, 2005 end of global quotas for most textile trade.

Market Economy/Economic Reform/Elimination of Barriers to U.S. Trade: The government has made limited progress on economic and market reform. Despite a bloated public sector, Kenya has a fairly diversified economy for domestic production and services. Kenya's major foreign currency earners are tea, horticulture, and tourism. A new Privatization Act entered into force in November 2005 to accelerate the long-delayed privatization of state-owned enterprises. The Kenyan government is expected to publish a comprehensive list of firms to be privatized in the coming years. The state owned railways will be concessioned in 2006, and two significant parastatals - Telekom Kenya, the monopoly fixed-line telephone company, and the Kenya Power and Light Company, the monopoly power distribution firm, will likely take steps towards partial privatization, as well. The East African Community's Customs Union began enforcing common external tariffs on January 1, 2005, and has begun efforts to harmonize some business and industry regulations, including those covering civil aviation. Kenya does not participate in the HIPC program, and despite official appeals for relief, the country's external debt is manageable. U.S. investment in Kenya is modest, but includes the manufacture of consumer goods, automobile assembly, and processed agriculture items, as well as participation in the tourism sector. The enforcement of intellectual property rights (IPR) remains weak, but the government is working to amend existing laws and to empower police and other law enforcement agencies to better protect IPR. In 2005, the Kenya Bureau of Standards contracted with two private companies to institute a new Pre-shipment Inspection regime. Following the introduction of the program some importers have complained that the GOK continues to charge Import Documentation Form fees in addition to fees paid directly to the two contract companies, viewing this as a form of "double taxation."

Political Pluralism/Rule of Law/Anti-Corruption: In December 2002, Kenya held presidential and parliamentary elections that the international community judged free and fair. A new coalition government, headed by now-President Mwai Kibaki was formed. National elections, in which some 70 political parties are expected to present candidates for local and national offices, are next scheduled for December 2007. The official opposition is active and can influence policy debates. In November 2005, Kenyans rejected a proposed new constitution, which was supported by President Kibaki. Kenya is making some progress toward improving the rule of law. The Judiciary is mostly free from executive branch influence. Corruption remains a significant problem in Kenya. In January 2006, a former Permanent Secretary in charge of Governance and Ethics released documents detailing corruption and cover up at the highest echelons of the Kibaki administration. As a result, three implicated ministers resigned in February. A 2005 Transparency International Kenya survey found that, while

incidents of petty bribery were on the decline, large-scale graft was on the increase. The Kenya Anti-Corruption Commission has begun to take investigatory action against senior government officials who fail to accurately account for their assets. In November 2005 the Public Procurement and Disposal Act became law. It is designed to close loopholes for graft in the government procurement of goods and services, one of the most widely exploited avenues for large scale corruption throughout Kenya's history. Much needed and long-delayed anti-money laundering legislation could be presented to Parliament in 2006.

**Poverty Alleviation:** Kenya remains a very poor country, with 56% of the population living on a dollar a day or less. The government has a mixed record of implementing its pro-poor Economic Recovery Strategy, which was designed jointly with the World Bank and IMF in 2003. The introduction of universal, free public primary education in January 2003 remains one of the government's most notable achievements, but primary education remains seriously underfunded and secondary education is beyond the means of many Kenyan families. Kenyans in a number of regions will face the continuation of a serious, three-year drought, which will reduce real incomes and erase meager assets for millions of Kenya's poor. In 2005 Kenya's civil service received pay raises, but the income disparity between low income and middle to upper income earners is wide and increasing.

**Labor/ Child Labor/ Human Rights:** Kenya's overall human rights record remains mixed. Freedom of expression and political participation continues to expand, and politically-motivated violence has diminished in recent years. However, trafficking in persons, child labor, and sex tourism remain problematic. Though prison conditions have improved over the last two years, they remain harsh and life-threatening. Police continued arbitrarily to arrest and detain persons; however, unlike in previous years, there were no reports that security forces arrested political activists. The government has arrested and prosecuted a number of police officers for abuses; however, most police who committed abuses were neither investigated nor punished. Lengthy pretrial detention is a problem. In 2005, violence marred some political campaigns and on a few occasions, the government restricted freedom of speech, press, assembly, and association. Police disrupted public meetings and forcibly dispersed demonstrators and protesters. Violence and discrimination against women and abuse of children remain serious problems. The government has not moved forward revisions to the labor law, as expected since 2003. However, some steps have been made in the past year to improve the sometimes-poor working conditions in the Export Processing Zones (EPZs). Kenya has ratified ILO conventions 29 on forced labor, 105 on prohibitions on forced or compulsory labor, and 182 on the worst forms of child labor. Kenya has not ratified the ILO convention No. 87 on freedom of association and protection of the rights to organize nor convention No. 98 on the right to organize and collective bargaining. Cases of forced labor have also been documented. Child labor is a problem in the informal sector, including child prostitution. International Labor Organization/International Program on the Elimination of Child Labor (ILO/IPEC) programs have been launched to address the child labor problem in several specific economic sectors. Child employment is prohibited by Kenyan law, but enforcement is not vigorous, and children continue to be employed in informal sector and as domestic workers. All children are required to attend primary school (grades 1-8).

End Text.

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